

REMARKS

Claims 45-70 have been canceled to clarify the subject matter of the present invention. Upon cancellation of claims 45-70, claims 71-82 are pending in the application. Claims 71-82 were indicated as allowed in the outstanding Office Action.

1. Rejection of claims 45-70 under the judicially created doctrine of obvious-type double patenting

Claims 45-70 are rejected under the judicially created doctrine of obvious-type double patenting as being unpatentable over claims 1-12 of U.S. Patent No. 5,897,880 and claims 35, 38-42 and 44-52 of co-pending application Serial No. 09/004,631. In the Office Action, the Examiner states:

Applicants traverse, arguing that there is no issue of double patenting in the instant application. This argument is respectfully traversed for the reasons stated already of record. With respect to applicants' argument that the patent claims are limited to certain nonionic polymers, this is clearly misplaced as the Examiner sees no such limitation in the independent claims and since only one claim is all that is necessary to require a double patenting rejection, this argument is clearly misplaced since all the patentee's claims do not limit to such polymers and even if this were the case, there still would be overlap between patentee's claims and the instant claims since the nonionic polymers clearly overlap between the instant claims and patentee's claims. While the Examiner agrees that the disclosure of a patent may not be used as prior art, applicants appear to be misplaced since the disclosure of the patent may be used as a dictionary. Such is what the Examiner relied upon, that is, the disclosure of the patent as a dictionary. As stated previously, since there is structural overlap between the pending claims and the issued claims, the Examiner sees no clear line of patentable demarcation in

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view of such overlap. This equally applies to the allowed claims.

Applicants respectfully submit that the foregoing amendment canceling claims 45-70 obviates the Examiner's rejection. In view of this amendment only claims 71-82 remain pending. As the Examiner indicated in the Office Action, claims 71-82 are allowable. Accordingly, the application has been placed in condition for allowance.

CONCLUSION

Based upon the cancellation of claims 45-70 and above remarks, the presently claimed subject matter is believed to be in condition for allowance. The Examiner is therefore respectfully requested to allow the application as pending. Favorable action with an early allowance of this application is earnestly solicited.

The Examiner is welcomed to telephone the undersigned attorney if he has any questions or comments.

Respectfully submitted,

NATH & ASSOCIATES

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NATH & ASSOCIATES
1030 Fifteenth Street, N.W.
Sixth Floor
Washington, D.C. 20005
Tel: (202) 775-8383
Fax: (202) 775-8396
GMN:TEJ:dhy/23842.roal

Scott F. Yarnell
Gary M. Nath
Reg. No. 26,965
Scott F. Yarnell
Reg. No. 45,245
Customer No. 20529